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EXAMINER				
HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
NOTIFICATION DATE		DELIVERY MODE		
06/07/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip@akerman.com

Office Action Summary

Application No.

10/599,364

Applicant(s)

PIERCE ET AL.

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 4-8 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 1-3 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species II, claim 3 in the reply filed on May 28, 2010 is acknowledged. Claims 4-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 28, 2010.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Abstract

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

4. The abstract of the disclosure is objected to because of the legal terms "whereby" and "wherein" [Abstract Lines 4-5]. Correction is required. See MPEP § 608.01(b).

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "12" has been used to designate both pivot point axis and lid [Page 8 Lines 20-21].

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "14" has been used to designate both pivot axis [Page 9 Line 16] and lid element [Page 10 Line 7].
7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "222" has been used to designate both foot operable means and lid and compactor assembly [Page 12 Lines 19 and 26].

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

8. **Claims 1-3, 11-13 are objected to because of the following informalities. Appropriate correction is required.**

9. Regarding Claims 1 and 11, the term "progress's" [Claim 1 Line 18, Claim 11 Line 14] could be written as "progresses". Claims 2 and 3 are objected to as being dependent upon objected base claim 1.

Regarding Claim 12, the phrase "...to close the opening to the rim ..." [Claim 12 Line 2] could be written as "...to close the opening to the bin"

Regarding Claim 13, the claim does not have a status identifier, since the claim was amended. See 37 CFR 1.121(c). Claim 13 should have the identifier (currently amended).

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

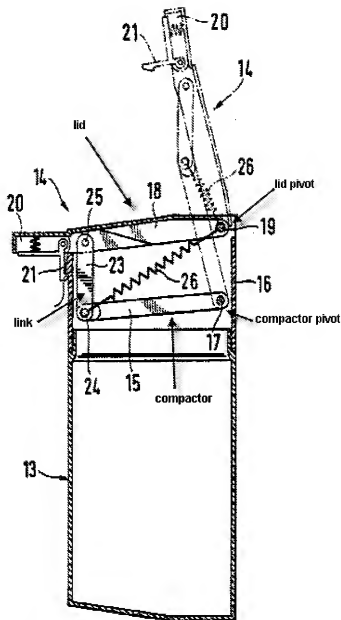
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. (4,286,515) [Baumann].

The patent to Baumann – a compacting waste basket – discloses a rubbish receptacle or bin [13] including a container with an uppermost lid [18] which is connected to the container by a pivot connection [19] so that it can assume by being pivoted about its pivot connection into a closed position with respect to an otherwise open top of the container [Fig. 3] and in a further position an open position whereby access for introduction of rubbish into the container can be achieved [Fig. 4], comprising a compactor [15] which is located so as to be below the lid when this is in a closed position with respect to the otherwise open top of the container [Fig. 3], and is supported at a rearward location by a first pivot connection [17, Col. 3 Lines 65-68] with the container which is aligned to be parallel to the pivot connection of the lid to the

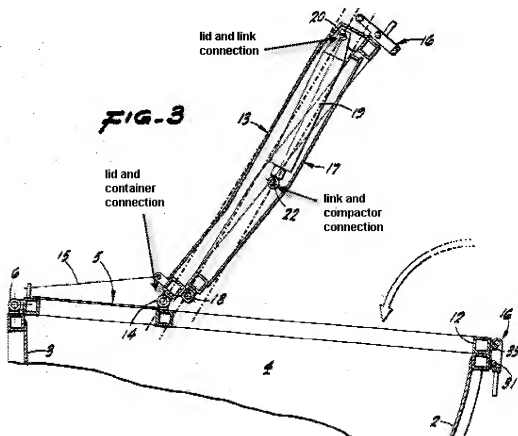
container [Fig. 3], and which is attached at a forward location of the compactor by a pivot connection [24, Fig. 3] about a parallel axis to the first pivot, to at least one link [23] which has its further end pivotally connected to the lid with an axis parallel to the first said link [25, Fig. 3], the relative position of the pivot connections being such that the compactor which includes a compactor member is caused to be lowered with a compacting action as the lid is brought into a closed position, and where an extent of mechanical advantage is achieved between any force applied to the lid as compared to a resultant compacting force provided by the compactor against any rubbish within the container is increased as the lid is closed [Col. 1 Line 67 – Col. 2 Line 3]. The lid can close and compress the garbage inside with little effort.



12. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (3,961,573).

The patent to Schmidt – a refuse container with compactor – discloses A compacting lid assembly [Fig. 1] including a rim [12] adapted to interengage with an opening of a bin, [1] an upper lid element [13] arranged to close the opening to the bin

[Fig. 1], a lower compacting element [17] adapted to compact the contents of the bin, the upper and lower elements both being pivotally connected to the rim at respective first ends [14 and 18], such that the pivot points are at least vertically spaced apart; a link [19], the first end of which is pivotally connected to a second end of the compacting element [at 22], the second end of the link being pivotally connected to the lid at a point [20] that remains between the pivot point for the first end of the connecting element and the pivot point of the lid throughout the arc of the lids travel [Figs. 1 and 3]. The pivot point of the link and lid connection is on a plane that is between the planes of the pivot point of the lid to the container and the pivot point of the link to the compactor [Schmidt, Fig. 1].



Allowable Subject Matter

13. Claims 1-3, 9, and 11 are allowed as presented by the applicant. The following is a statement of reasons for the indication of allowable subject matter.

Regarding Claim 1, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose that when the lid is closed the pivot connection axis is further forward than the pivot axis of the lid to the container, and rearward of the axis of the pivot connection of the link to the compactor, and beneath a plane defined by the axis of the said first pivot connection and the axis of the pivot connection of the link to the compactor.

Regarding Claim 9, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose a second end of the link being pivotally connected to the lid with an axis that is parallel to the said first said pivot connection and, when the lid is in a closed position is lower than a plane defined by the respective axes of the pivot connection of the compactor to the rim, and the pivot connection of the link to the compactor.

Regarding Claim 11, the prior art discloses most of the claimed invention; however, the prior art does not expressly disclose a second end of the link being pivotally connected to the lid with an axis the location of which changes as the lid is opened from a closed position from a position where the axis is below a plane defined by the respective axes of the pivot connections of the part to the bin and the link to the part, to a position where the axis is above this plane as the opening progresses.

14. Claims 1 and 11 **would** be allowable if rewritten or amended to overcome the objections to the claims set forth in this Office action.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

